

# Collective Redress Likely to Become a Reality in Belgium

Article By:

Antitrust & Competition Practice

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The Belgian Government has today submitted a draft federal bill on collective redress for approval in the parliament. If passed, it will introduce collective redress into Belgian legislation for the first time. It will also put into play a number of the principles set out by the **European Commission (Commission)** in its recommendations on collective redress mechanisms for the Member States. It is expected that the bill will get approval before the national elections in May.

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If passed, the bill will create a powerful tool for consumers harmed by an infringement of competition law or certain other laws, *i.e.*, those relating to product liability or intellectual property, to enforce their claims. In the past, consumers may have been discouraged from taking action or not even have known that they had suffered any harm.

The Belgian draft bill incorporates the common European principles set out by the Commission and ensures that the collective redress procedures “are fair, equitable, timely and not prohibitively expensive”. Other Member States, such as France, Italy, Portugal and Spain, have already put, or are in the process of putting, similar legislation in place.

## The Draft Bill

Consumers wanting to take action will only be able to do so through a representative body of one of the following types: a consumer association with legal personality that is a member of the Belgian Consumers’ Council; an association that does not have an economic purpose, has been in existence for at least three years and is authorised by the Minister for Economy; or the federal consumer mediator. This aims to guarantee that the entities representing consumers are not-for-profit and are guided only by the interests of those affected, in line with the European recommendations. This also means that lawyers, trade unions and special purpose vehicles will be unable to act as representatives.

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An action for collective redress will only be available to compensate consumers for an actual loss incurred and no punitive damages can be awarded, thus preventing abusive litigation.

A further measure to avoid abuse of the process is the obligation on the losing party to pay for the costs of the administrator of the claim, the publicity measures set out in the bill and part of the winning party's legal fees.

There are two types of procedure: under the opt-in procedure, all consumers in the relevant class need to opt into the action to benefit from it whereas, under opt-out, they benefit from it automatically unless they specifically choose not to. The Commission specifically recommended that opt-in should be the standard procedure and any exception should be "duly justified by reasons of sound administration of justice".

In contrast with the Commission's recommendation, the draft Belgian bill allows the judge to decide between the opt-in and the opt-out procedure. The opt-in procedure is, however, mandatory

- Where the consumer does not reside in Belgium
- Where the claim is for moral or physical damage.

As recommended by the Commission, the judge will play a major role in the management of the three procedural stages of the case:

1. *Admissibility*: the judge will check the efficiency gains of a collective action and ensure that the representative fulfils the conditions. He then decides whether or not to accept the claim.
2. *Negotiations*: there is a mandatory settlement period (between three and six months). If the parties reach a settlement it will be binding if confirmed by the court.
3. *Trial and judgment*: the case will proceed before the court if the parties do not reach a settlement, or if the settlement is unacceptable and not confirmed by the court.

## Comment

The Commission has stated previously that victims sought to obtain compensation in only 25 per cent of all antitrust infringement decisions it has taken in the past seven years. The recommendations to the Member States seek to address this shortcoming for competition law and infringements of other laws.

If passed in its current form, the Belgian bill will go a long way towards helping consumers gain compensation for any harm done to them, whilst the various safeguards included in line with the Commission's recommendations should ensure that the process is not abused.

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